2) ಕೈಗಾರಿಕೆ ಇಲ್ಲದ ಪ್ರದೇಶಗಳಲ್ಲಿ ಹೊಸ ಕೈಗಾರಿಕೆಗಳನ್ನು ಸ್ಥಾಪಿಸಲು ಸರ್ಕಾರ ಉದ್ದೇಶಿಸಿದೆಯೇ ಇದರ ರೂಪು ರೇಷೆಗಳೇನು;

3) ಕಳೆದ 3 ವರ್ಷಗಳಲ್ಲಿ ಇದಕ್ಕಾಗಿ ಮೀಸಲಿಟ್ಟ ಹಣ ಎಷ್ಟು; ಮತ್ತು ಅಭಿವೃದ್ಧಿಗಾಗಿ ಖರ್ಚು ಮಾಡಲಾದ ಹಣ ಎಷ್ಟು?

ಶ್ರೀ ಆರ್.ವಿ. ದೇಶಪಾಂಡೆ (ಭಾರೀ ಮತ್ತು ಮಧ್ಯಮ ಪ್ರಮಾಣದ ಕೈಗಾರಿಕಾ ಸಚಿವರು)

1) ರಾಜ್ಯದಲ್ಲಿ ಎಲ್ಲಾ ಜಿಲ್ಲೆಗಳಲ್ಲಿ ಹಾಗೂ ಎಲ್ಲಾ ತಾಲ್ಲೂಕುಗಳಲ್ಲಿ ಕೈಗಾರಿಕೆಗಳು ಸ್ಥಾಪಿಸಲಾಗಿದೆ.

2) ಎಲ್ಲಾ ತಾಲ್ಲೂಕುಗಳಲ್ಲಿ ಹಾಗೂ ಜಿಲ್ಲೆಗಳಲ್ಲಿ ಹೆಚ್ಚಿನ ಕೈಗಾರಿಕೆಗಳನ್ನು ಹೊಸದಾಗಿ ಸ್ಥಾಪಿಸಲು ಸರ್ಕಾರವು ಆಗಿಂದಾಗ್ಗೆ ಹೊಸ ಕೈಗಾರಿಕಾ ನೀತಿಯನ್ನು ಪ್ರಕಟಿಸುತ್ತಿದೆ. ಮುಂದಿನ 5 ವರ್ಷಗಳಲ್ಲಿ ಹೆಚ್ಚಿನ ಹೊಸ ಕೈಗಾರಿಕೆಗಳನ್ನು ಸ್ಥಾಪಿಸಲು ಅತಿ ಶೀಘ್ರದಲ್ಲಿ ಹೊಸ ನೀತಿಯನ್ನು ಪ್ರಕಟಿಸಲಾಗುವುದು.

3) ಕಳೆದ 3 ವರ್ಷಗಳಲ್ಲಿ ಕೈಗಾರಿಕಾಭಿವೃದ್ಧಿಗಾಗಿ ಆಯವ್ಯಯದಲ್ಲಿ ಮೊತ್ತ ರೂ. 490.00 ಕೋಟಿ ಮೀಸಲಿಟ್ಟ ಹಾಗೂ ಅಭಿವೃದ್ಧಿ ಪಡಿಸಲು ವೆಚ್ಚ ಮಾಡಿದ ಮೊತ್ತವು ರೂ. 367.06 ಕೋಟಿ ರೂ.ಗಳಾಗಿರುತ್ತವೆ.

ಅಬಕಾರಿ ಕಾಯ್ದೆಗೆ ತಂದಿರುವ ತಿದ್ದುಪಡಿಗೆ ಹೈಕೋರ್ಟ್‌ನಲ್ಲಿ ಸಲ್ಲಿಸಿರುವ ರಿಟ್:

52 (128) ಶ್ರೀ ಜಗದೀಶ್ ಶೆಟ್ಟರ್ (ಹುಬ್ಬಳ್ಳಿ ಗ್ರಾಮೀಣ): ಮಾನ್ಯ ಮುಖ್ಯ ಮಂತ್ರಿಗಳು ಈ ಕೆಳಕಂಡ ಪ್ರಶ್ನೆಗಳಿಗೆ ದಯವಿಟ್ಟು ಉತ್ತರಿಸುವರೇ?

1) ಅಬಕಾರಿ ಬಾಕಿ ವಸೂಲಿಗಾಗಿ ರಾಜ್ಯದಲ್ಲಿ ಅಬಕಾರಿ ಕಾಯಿದೆಗೆ ತಿದ್ದುಪಡಿಯನ್ನು ತರಲಾಗಿದೆಯೇ; ಹಾಗಿದ್ದಲ್ಲಿ ಈ ತಿದ್ದುಪಡಿಯನ್ನು ಯಾವ ವರ್ಷದಲ್ಲಿ ತರಲಾಗಿದೆ; ತಿದ್ದುಪಡಿಯ ವಿವರಗಳನ್ನು ನೀಡುವುದು;

2) ತಿದ್ದುಪಡಿಯ ವಿರುದ್ಧ ಕೆಲವು ಸಾರಾಯಿ ಗುತ್ತಿಗೆದಾರರು ಹೈಕೋರ್ಟ್‌ನಲ್ಲಿ ಅಪೀಲು ಸಲ್ಲಿಸಿರುವರೇ;

3) ರಿಟ್ ಪಿಟಿಷನ್‌ಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ರಾಜ್ಯ ಸರ್ಕಾರವು ತನ್ನ ಆಕ್ಷೇಪಣೆಯನ್ನು ಕೋರ್ಟಿಗೆ ಸಲ್ಲಿಸಿದೆಯೇ; ಹಾಗಿದ್ದಲ್ಲಿ ಸದರಿ ಆಕ್ಷೇಪಣಾ ಪ್ರತಿಗಳನ್ನು ನೀಡುವುದು;

4) ರಿಟ್ ಪಿಟಿಷನ್ ಸಂಖ್ಯೆ 6734:95, 9224- 28:95, 9830:95, 13001:95 ಸಿಡಬ್ಲ್ಯೂ ಇವುಗಳಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಅಪೀಲು ಪ್ರತಿಗಳನ್ನು ನೀಡುವುದು?

ಶ್ರೀ ಎಸ್.ಎಂ. ಕೃಷ್ಣ (ಮುಖ್ಯ ಮಂತ್ರಿಗಳು)

1) ಹೌದು. ಅಬಕಾರಿ ಬಾಕಿಯನ್ನು ವಸೂಲು ಮಾಡಲು ಸಿವಿಲ್ ನ್ಯಾಯಾಲಯಗಳು ತಡೆಯಾಜ್ಞೆಯನ್ನು ನೀಡದಂತೆ ಕರ್ನಾಟಕ ಅಬಕಾರಿ ಕಾಯ್ದೆ 1965ರಲ್ಲಿ ಹೊಸ ಪ್ರಕರಣ 68 ಬಿ, ಸಿ ಮತ್ತು ಡಿ ಗಳನ್ನು ಸೇರಿಸಲಾಗಿದೆ. ಈ ತಿದ್ದುಪಡಿಯನ್ನು 1995ರಲ್ಲಿ ಮಾಡಲಾಗಿದೆ.

2) ಅಪೀಲು ಸಲ್ಲಿಸಿಲ್ಲ. ಆದರೆ ರಿಟ್ ಅರ್ಜಿ ಸಲ್ಲಿಸಿದ್ದರು. ಅವು ದಿನಾಂಕ: 16-7-98ರಲ್ಲಿ ವಜಾ ಆಗಿರುತ್ತವೆ.

3) ಲಗತ್ತಿಸಿದೆ (ಅನುಬಂಧ-1)

4) ಲಗತ್ತಿಸಿದೆ (ಅನುಬಂಧ-2)

ANNEXURE-I

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

ORIGINAL JURISDICTION

W.P. No. 13001-02 OF 1995

BETWEEN

1. Shivappa Rajappa Jorapur
   S/o Rajappa
   Aged 73 Years
   Excise Contractor
   Ningapur Galli
   Kanapur, Belgaum District.

2. M/s Renuka Enterprises
   Registered Partnership Firm
   Represented by its
   Managing Partner
   Sri G.R. Jonapur
   S/o Rajappa, Excise Contractor
   Ningapur Galli,
   Kanapur, Belgaum District. Petitioners

And

1. State of Karnataka
   Represented of its
   Additional Cheif Secretary
   and Commissioner.
   Finance Department

Vidhana Soudha, Bangalore.

2. Excise Commissioner,
State Government of Karnataka
Diamond Jublee Business Comples,
Vokkaligara Sangha Building,
Hudson Circle, Bangalore-27.

3. Deputy Commissioner for
Excise, Belgaum District.
Belgaum.

4. Deputy Commissioner for
Excise, Dhawar District
Dharwar. Respondents

MINOR WRIT OR WRIT PETITION FILED UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA:

The Petitoners respectfully submit as under:

1. The petitioner is an arrack contractor for Kanapur Taluk, Belgaum District, for the year 1985-86 on a monthly rental of Rs. 4,00,000/-. There were 47 licenced shop. The contract period was from 1-7-1985 to 30-6-1986 and it is for a period of 12 months. Ravindra Distilleries, the bottling unit at Belgaum was entrusted with the responsiblity or supplying bottled arrack to the Ist petitioner, licence is several measures as prescribed on his demand, he quots was fixed by the Government either on monthly basis or an Yearly basis as agreed to between the petitioner and the Government the said bottling unit was not able to supply bottled arrack as demanded by the petitioner, and as a consequeance, there was short supply of arrack, to the tuns of 1/4 (one forth) of the total demand for month and as a result as there was loss to the tune of Rs. 12,60,000/- and the same is reflected in the regular accounts of the first petitioner.

2. The 2nd petitioner is a registered partnership firm represented by its Managing Partner, who were the arrack contractor for Naragund Taluk, Dharwar Dist, for the year 1985-86 on a monthly rentals of Rs. 2,65,000/- and the period of licence commencing from 1-7-1985 ending on 30-6-1986. There were about 25 licenced shops in the said taluk, the. Gemini Distilleries were entrusted with the responsiblity of supplying bottled arrack to the 2nd petitioner on his demand. The said bottling unit failed to supply bottled arrack as demanded by the petitioner and thus there was short supply to the 1/4 of total demand for the whole year and there was a loss to the extent of Rs. 7,95,000/- as reflected in the regular ccounts maintained by the 2nd petitioner during the year in question.

3. The petitioners as a consequence of heavy loss to the tune and extent of one forth of the monthly rentals payable by them as there was short supply of arrack of the total consumption for the entire year, approached this Hon'ble court by filing writ petition in W.P. No. 7972 of 1987 and other connected writ petitons including that of the petitioners claiming proportionate reduction in the payment of monthly tax to the extent of one forth of the monthly rentals payable by them to the Government of Karnataka and other consiquential reliefs and in view of the said main relief, the Hon'ble High court was pleased to grant interim reliefs staying the collection of one forth of the monthly rentals pending disposal of the writ petitons on merits. These petitions were disposed by the learned Single judge of this Hon'ble court on 18-4-1986 claiming the petitions and holding that the petitioners should approach the civil court for necessary reliefs in this regard and the writ petitions are not maintainable as question of fact has to be decided and there is no xerox copy to record evidence in writ petitions to prove facts alleged in the petitions and thus holding the writs are not mainitainable. It is submitted that on this findings of the learned single judge, writ appeals were filed before the division bench of this Hon'ble court in WP 701 to 705 of 1986 connected writ appeals, questioning the correctness of the order of the learned single judge Petitioners had also filed writ appeals in W.A. 775- of 1986.

4. These writ appeals have now been disposed off on 31st Oct 1994 that following the decision of the Supreme court in assistant Excise Commissioner and others V. Teasack Peter & Others (J.T. 1994(2) C P 140) These appeals were dismissed, this order of this Hon'ble court was further modified by the some division bench on 17-2-1995, the furhter modified order is as follows:

*It is not necessary to recall order dated: 1-10-1994 as prayed for the appellants in these cases, However, we clarify that it will be open to the appellants, either to make representations to the Government or file civil suits and obtain necessary interim relief if such representations are made to the Government within one month from today. The Government shall dispose off the same through an officer of the apporpriate rank who may preferably be higher to that of Excise Commissioner within four weeks from the date of the receipt of such representations, Until such time or until the appellants obatin the interim relief from the civil court, within three weeks from today, it would be appropriate for the respondents not to take any coaraive steps. We are making this clarification in view of previous orders passed in W.P. Nos 33031 & 33032 of 1993 on 5th April 1994.

The above mentioned xerox copy of the order is produced and marked ANNEXURE 'A' along with the petition.

5. In the same time the Ist respondents state Government published notification which is published in the gazette extraordinary dated: 25-2-1995 published 'Publishing the Karnataka Excise 3rd Amendment Act, 1993, (Karnataka Act 2/95) whereby, sections 68 of the existing Karnataka Excise Act (hereinafterr eferred to as the Act) is now added with section 68B, 68C, and 68D by virtue of which the aggrieved parties are restrained from approaching any civil court as well as restraining the granting of interim order of any natre of by any court for all civil matters arising out of the present Excise Act, besides it also declares that apart from the existing the interim orders getting dissolved or vacated the pending suits and appeals or other proceeding stand abatted.

Copy of the said notification is produced and marked ANNEXURE-B for the sake of convenience the petitioners are producing herewith the extract of the entire section 68A, 68B, and 68D and section 69 of the Act and the fax message of the Excise Commissioner as ANNEXURE-C.

6. It is submitted that Act 2 of 1995, incorporating sections 68B, 68C, and 68D and section 3 of the Act providing for disposal of the pending proceedings received with assent of the Government on 21-2-1995 and the same has been published in the gazette dated: 25-2-1995.

7. Section 68-B of the Act take away the jurisdiction of the civil court in respect of any matter which any Excise officer or other authority, order by under the Act is competant to determine,. the said section further takes away the jurisdiction of any court to grant injunction is respect of any action taken or to be taken by such excise officer or authority in persuance of any power conferred by or under the Act. The said section reads thus:

> 68-B bar of jurisdiction of civil court no civil courts shall have jurisdiction in respect of any matter which any excise officer or other authority empowered by or under this Act has to determine and not injunction shall be granted by any court in respect of any section taken or to be taken by such excise officer or authority in pursuance of any power conferred by or under this Act".

8. Section 68-C of the Act provides that not withstanding anything contained in the civil procedure code, or in any other law for the time being in force, no court shall grant any permanent or temporary injunction. The said section reads thus:

> "68C injunction not to granted in respect of recovery of Excise dues-(i) notwithstanding any thing contained in the code of civil proceedure 1908 (Central Act V of 1908) or in any other

law for the time being in force no court shall grant any permanent or temporary injunction or make any interim order retaining any proceedings which is being or about to be taken for:

i) The recover of any sum or fee or both levied in consdieration of rent or lease of any exclusive or her rights under this act or the rules made there under or any fee duty or any contervaling duty and including licence fee and litre fee or any other fee levied under this act or the rules made thereunder:

ii) The grant of any exclusive or other right under section 17".

Sub section 3 of the section 68C further provides that all interim order issued for made by the Court whether in the nature of temporary injunction or otherwise restraining any proceedings referred to in clauses (i) and (ii) of subsection (i) which is being or about to be taken shall stand dissolved or vacated. Sub section (2) of section 68C reads as follows:

"All interim orders issued or made by such court whether in the nature of temporary injunction or otherwise restraining any proceedings referred to in clauses (i) and (ii) of sub-section (i) which is being or about to be taken shall stand dissolved or vacated as the case may be".

9. Section 68D provides that not withstanding that a writ petition has been preferred before this Hon'ble court or a suit or other proceedings has been instituted in any court or any appeal has been filed before any court etc, any such due to the state Government under the Act as a result or demand or order or made or passed by any officer or authority empowered in this behalf of by or under this Act shall be payable in accordance with such demand or order. Section 3 of the act further provides all suits. Appeals and other proceedings in respect of the matter referred to in section 68D and matter connected herewith

pending before the court immediately before the date of commencement of this Act shall have effect and shall abate. The said section 68D reads as follows:

68-D Excise revenue to be paid irrespective of pendency of any writ petition, suit etc. Notwithstanding that a writ petition has been preferred before the high court or a suit or other proceedings has been instituted in any court or any appeal has been filed before any court, the Karnataka Appellate Tribunal or the Excise Commissioner or a revision has been filed before the state Government any sum due to the state Government under this Act as a result of demand or order made or passed by any officer or authority empower in this behalf by or under this Act shall be payable in accordance with such demand or order".

Section 3 reads as follows:

"2. d-disposal of pending proceedings-all suits, appeal and other proceedings (Including execution proceedings) in respect of the matters referred to in section 68B and matters connected therewith pending before any court immediately before the date of commencement of this Act shall not have effect and shall abate".

Provided that in computing the period specified in sub-section (1) and (2) of section 61 the period during which the suit, appeal or other proceedings referred in this section is pending in any court shall be excluded".

10. Therefore from reading of section 68B, 68C, 68D, it is close that the jurisdiction of the court which must be understood only as the civil courts is taken away to seek relief against the state or its officers in respect of any claim made by the state or its officers, against any citizen or a person. It is also clear from the provisions referred to above the power of civil court is to grant an order of injunction either permanent or temporary restraining the State and its officers from

recovering the sum, alleged to be due by excise contractors is taken away. Further all interim granted by the civil court also stands dissolved. The suits and appeals pending before the civil court also get abated, In other words, if there is a dispute with regard to the alleged claim made by the state for the recovery of any excise duty, by an excise contractor the said excise contractor has no defence in the matter, He has not remedy to defend the claim that may be made by the State however the said claim is baseless, arbitrary, untruthful and unlawful. In respect of all liability made against any person by the state such a person is concerned, he has no remedy or judicial review. His right to approach the civil court and seek a appropriate relief is completely barred, an atched away completely even against an just and unconsciounable.

11. That the petitioners are advised to submit that the entire Act 2 of 1995 which makes on Amendment to the Karnataka Excise Act, by incorporation sections 68B, 68C and 68D and sub-section 3 provided for disposal of the pending proceedings is totally illegal and unconstitutional and void in law. The petitioners are advise to submit that our constitutional set up contemplates judiciary, legislative and executive. But establishment and continuance of the judiciary is one of the basic features of the constitution. It is not possible and permissible for the state to take away the right of a person to get his rights adjudicated before a civil court just as a state a cannot abolish the courts or adjudicating machinery provided to resolve the dispute between the private parties or betwen the state and private parties. The effect of Act 2 of 1995 is in no fact as concerned for all practical purpose civil courts are not in existance. It is not permissible in law and under the provisions of the constitution.

12. The Sections of code of civil proceedure, recognises the basic feature of the constitution or the common law right which is in behalf in our constitutional system to approach the civil court, for adjudication of his rights. Section 68B bars such remedy. Therefore either is the position under section 68C of the Act. Section 68D even when away the power of this Hon'ble court which is exercised under Article 226 &

227 of the constitution of India or in exercise of its appeallate or original jurisdiction. The petitioners have no approached this Hon'ble court by way of any other writ petition, by themselves or through any person earlier on the same cause of section. Under these circumstances the petitioners have no alternative and efficacious remedy than approaching this Hon'ble court invoking its extra ordinary writ jurisdiction under Article 226 of the constitution of India, for the following reasons:

GROUNDS

13. It is submitted that the High Court of a State is established under Article 214 of the Constitution of India and Article 215 of the consitution declares it to be a court of record investing with the power to punish for its contempt under Articles 226 & 227 of the constitution, every High Court is entitled to its power within its territory in the matter of issuance of any person or authority including any Government, directions, orders, writs including the writs in the nature of abeas, corpus, mandamus, prohibition, cowarrant and certiorari. The powers rested with the High Court of state under a Articles 226 and 227 of the constitution includes the power to grant interim relief. But surprisingly the state legislature by the impugned amendement, has even taken away the said authority and power of this Hon'ble court which is impermissible in law and it is in utter violation of the constitution of India.

14. That under Article 245, the state legislature is entitle to make law for the whole or any part of the territory and the subject matter of the laws made by the state legislature of the parliament as the case may be, are governed under Article 246 of the constitution of India. Or other words, the state legislature is competent to make the law in respect of the items in the list-II VII schedule which is a state list and entry-8 of the List II of 7th schedule provides for making the law in the matter of intoxicating liquors, i.e. production, manufacture, possession, transportations, purchases and sale of the intoxicating liquors, whereas under entry 51 of the 7th schedule it is also entitled to make the duties of excise on the alcoholic liquors for human consumption manufactured

and produced in the state. Surprisingly in the instant case, the state legislature has not enacted the law in respect of any duty one of the said entries, but is has by enacting the law in question has encroached upon the jurisdiction of the courts including the Hon'ble court established by law which is not within the legislative competance of the state legislature, besides even if a special statute can be made, it can be made only by an providing an equal effective and alternative remedy else where as required under section 4 of the code of civil procedure. It is submitted that effecacious constitutional remedies provided under the Indian Constitution cannot be undone by any state legislature and it has no competance and jurisidction to do so.

14. The Karnataka Act 2 of 1995 which has incorporated provisions of section 68B, 68C, and 68D and section 3 of the act in substance prevents or debars a person approaching the court for adjudicating his civil rights in the event of any steps being taken to recovery any alleged arrears of kisth amount or other excise dues to the state Government in other words the person who has a bonafide or genuine dispute with regard to the claim made by the state against him for payment of excise dues has a remedy and the decisions of the authorities or excise officer is final. Our constitutional set up onvissages judicial review as basic feature of the consitiution. From reading of several provisions of Act 2 of 1995, which amends the Karnataka Excise Act of 1965, is clear wherever there is dispute arises by a person against the state in respect of excise dues and other dues such a persons has no legal remedy except the decisions of the authorities of officers concerned. Therefore the said provisions is liable to be stuck down as unconstitutional as being opposed to the basic structure and feature of the constitution.

15. The provisions of 68B, 68C, 68D and section 3 of the Amended act are liable to be struck down as unconstitutional as being highly unreasonable, arbitrary and discriminative in future. The State being the biggest litigent on every powerful authority as against a person cannot pass a legislation which will be totally one sided and for its benefits which deprives a person of his right to get dispute, rights by

him with the state settled with a proper court of law. Section 68B makes the decision of the Excise officer final in respect of the provisions is made under the excise Act to determine any matter and the Civil Court jurisdiction is taken away in respect of the said matters. Similarly the power of the civil court a grant injunction in respect of the said matter is also taken away. The said provisions is highly unreasonable, illegal and discriminative in nature. The same seriously affects the right to livilihood guaranteed to a person as a person is compelled to accept the decision of the excise officers which will have the effect on the life of a person if the decision of the said excise officer is illegal and same is allowed to stand it would jeopardise the very living and his civil right and conferred by the law of the land.

16. Sections 68B, 68C, 68D of the Excise Act and section 3 of the amended Act are also liable to be struck down as being violable of the code of civil procedure. Section 9 of the civil procedure code recognise the constitution right quaranteed to a person to approach the civil court. Therefore the provisions being opposed to the provisions of code of civil procedure are liable to be declared as null and void.

17. The state which has monopoly and absolute control is the matter of dealing with excise contractor in preventing a person approaching civil court dispute is raised by him when claim made by the officer of the state against such a person. If that is alloted the right to carry on business guarantee to citizen made Article 19(1)(g) of the constitution of India is affected.

18. That the adjudication of the dispute is a common civil right guaranteed to very person. The Civil procedure code confers power on the civil court to grant both permanent and temporary injunction whensover illegal demands are made against a person. No over the provisions of the amended act 2 of 1995 debars the civil court either to grant permanent injunction or temporary injunction in the matter of proposed action of the state Government for recovery of any amount which is in the nature of excise dues by a person to the state the excise

dues are picked up for proferential treatment of against various other types of arrears due to the state Government. If a person who is in arrears of various other revenues due to the state Government can approach the court and seek appropriate relief for adjudication of his right, there is absolutely no justification to prevent the persons who are stated to be in arrears due should be prevented in approaching the civil court by proper relief by way of permanent injunction or temporary injunction. Therefore the provisions of Act 2 of 1995 is liable to be struck down as violative of Articles 124 of the constitution of India.

19. Sub-section 2 of Section 68-C dissolves or vacates the interim orders passed by the court. The courts pass the orders on the basis of the evidence on record and appriciating the same and after application of mind after due consideration of legal position and respective right of the parties. Such a judicial decision cannot be an set at knot by incorporation and sub-section 2 of section 68C of the Act and providing with such interim orders stand dissolved or vacated unless basis of such civil court decision or interim orders are removed in the legislation itself.

21. Section 68D of the Act run count or to the power conferred on the High Court under Articles 226 and 227 of the constitution of India, on this ground along the said section is liable to be struck down. Further said section also taken away the power of the civil court appeallate tribunal and excise commissioner to pass appropriate orders granting the relief to the parties in the appeal or revisions of any proceedings that are taken or instituted before them.

22. Section 3 of the amending Act 1995 in one stroke provides that all matters referred to under section 68B and matters connected therewith and matters connected therewith pending in the civil court immediatly after the commencement of the Act shall not affect the recovery proceedings and stand abated. The effect of the said provision is to by one state dismissal of the suits pending adjudication before civil courts and even inspite of which some other interim orders would

have been passed by the civil courts. This is not permissible in law. The said provision is also liable to be struck down, as unreasonable, arbitrary and rights guaranteed to the petitioners under Article 14 of the consitution of India, is ought to be take away by the amendments. As stated earlier the number of suits proposed to be filed by the petitioners are to be adjudicated upon before the said civil court and the effect of section 3 is to prevent filing of the suits and even the suits are pending stand abated violates the provisions or under the constitution.

23. Amendment 2 of the state excise Act also violates Article 300 of the constitution of India, which gives citizen a right to sue the state Government relating to the officers of the state Government including the contractual obligations with the citizen, which is mandatory and fundamental in nature and which the state legislature has jurisdiction or competance to do and thus the impugned amendment is violative of this specific provision and thus to be decided as illegal and unconstitutional.

24. The impugned legislation also goes counter to the directions that have issued by this Hon'ble court while exercising the power under Articles 226 & 227 of the constitution of India permitting the parties to approach the civil court or the Government, authority and under nulliflying this Hon'ble court seeking the amendement illegal, absitrary, and unconstitutional, viewed from any angle the proposed amendment appears to be outregions, and unconscionable, and demolishing the basic structure of the constitution and which act of the state is legislature is impearmissible unde the constitution of India.

GROUNDS FOR INTERIM RELIEF

25. This Hon'ble court has ruled that the petitions can approach the civil court or the governmental authority making *suitable* representation by its order dated: 17-2-95 (Annexure-A) so also the provisions under the Constitution of India and civil procedure code

gives and confers the right on the petitioners to approach the civil courts or any other authority under the excise Act for necessary reliefs on the acts, and commission by the state agencies arising out of their contractural obligations.

Precious fundamental right is sought to be taken away by the impugned and amendment, permissible making it illegal, arbitrary and constitutional and violation of the constitution, and law of the land and thus in alll livelihood the impugned amendments likely to be delcared so by this Hon'ble court. Now by virute of this amendments, petitioners are debarred from filling suits in the civil court and in the alternative approaching the Government agencies for reliefs. If the operation of the impugned enactment in this writ petition is not stayed pending disposal of this petition on merits, it would take away the right to approach the authorities, and civil court, jeoparding the interest and causing them irreporable loss, and injury. The balance of convenience is with the petitioners, and than it become necessary and essential that the operation amendment is stayed pending disposal of this writ petition in the interest of justice and equity.

MAIN PRAYER

WHEREFORE it is prayed that this Hon'ble court be pleased to call for the records and other proceedings and:

i) ISSUE a writ of certionari or any other appropriate writ, orders or directions and quash the impugned enactment published in the Karnataka Gazette extraordinary dated: 25-2-1995 in Notification on No. LAW 33 LGN 95 dated: 2-2-1995 known as Karnataka Excise 3rd amendment Act 1993 (Karnataka Act No. 2/95) vide Annexure-B.

ii) Issue a writ of mandamus declaring the impugned enactment is inconstitutions, and beyond the State legislative competence and violative of the provisions of the constituion of India.

iii) Issue any other appropriate writ, order or direction as this Hon'ble court deems fit, and proper under the facts and circumstances of the case in the interest of justice.

INTERIM PRAYER

For the reasons stated in para 25, it is prayed the this Hon'ble court be pleased to grant anadinto in order of stay, staying the effect, operation, enforcement and implementation of impugned enactment called Karnataka Excise Third Amendment Act, 1995 (Karnataka Act No. 2 of 1995). which is published in the Gazette extraordinary dated: 25-2-1995 in Notification No. LAW 33 LGN 93 dated: 25-2-1995 (Annexure-D) and permitting the petitioners to approach the civil court or Government authorities/agencies for necessary reliefs available to them under the existing law, pending disposal of this petition on merits, in the interim of justice.

Bangalore.
25-3-1995 Advocate for Petitioners.

Address for Service:
C.V. Guruve Gowda,
Advocate,
2nd Floor, Sarpa Shushana
Mutt Building, Tank Bund Road,
Bangalore-9.

IN THE HIGH COURT OF KARNATAKA, AT BANGALORE

W.P. No. OF 1995.

Between:

Shivappa Rajappa Jorapur
& Others Petitioners
And
State of Karnataka & Others Respondents

AFIDAVIT

I, S.R. Jorapur, Son of Rajappa, aged 73 years Excise Contractor, Ningapura Galli, Kanapura, Belgaum District today at Bangalore do hereby solomnly affirm and state on Oath as follows:

1. I am the first petitioner in the above petition and managing partner of the 2nd petitioner and as such I am conversant with the facts of the case and competent to swear to this affidavit.

2. I state that statements made in paras one to twenty five of the writ petition accompanying this affidavit are true to the best of my knowledge, information and belief.

3. I state that Annexures A to C are true copies of the originals.

I do hereby affirm and state that this is my name and signature and the contacts of the affidavit are true to the best of my knowledge and belief.

Identified by

Advocate. Respondents

Bangalore
29-3-1995
Corrections.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
(ORIGINAL JURISDICTION)
W.P. No. 6734 OF 1995

BETWEEN

K. Balakrishna Rai
S/o Narayana Rao
Aged 48 Years
Arrack Contractor
Amar Badlur Village,
Chokkadi, Sullia Tlauk,
D.K. District.

And:

1. The State of Karnataka
   by its Commissioner and
   Secretary, Department of
   Finance and Excise,
   Vidhana Soudha,
   Bangalore.

2. The Excise Commissioner
   in Karnataka, II Floor,
   Diamond Jubilee commercial
   complex, Vokkaligara Sangha
   Building, K.R.C. Circle,
   Bangalore-27.

3. The Deputy Commissioner of Excise
   Mangalore, D.K. District.

4. The Manager
   Canara Bank, Bull Matta Road,
   Mangalore. Respondents

MEMORANDUM WRIT OR WRIT PETITION UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA:

The Petitoners above named begs to submits as under:

1. It is submitted that the petitioner is an Excise contractor by profession and during the excise year 1991-92 he had taken on lease the right of the retail vend of arrack in Mangalore Taluk, D.K. District, on a monthly rental of Rs. 68,01,000/- since the respondents 1 to 3 committed breach of the terms and conditions of the contract and since they fail to protect the interest of the petitioner as well as made an illigitimate demand for the payment of the rental he initially approached this Hon'ble court in a writ petition and subsequently after the disposal of the writ petition by this Hon'ble court reserving liberty to initiate

appropriate suit and in terms of order made up, the petitioner filted in OS No. 1708/92 in the file of civil 1 Judge for the relief of madatory injunction for proportionate deductions of 50% of the rental and also for the permanent injunction restraining the recovery of the legal arrears of rentals of over and above the said 50%. The petitioner also made an application for temporary injunction and after notice, the learned city civil judge was pleased to make an order directing the authority not encash the bank guarantee furnished through the 4th Respondent bank during the pendency of the said suit.

2. It is submitted that subsequently on 21-1-1995, the learned city civil judge, Bangalore, passed a judgement and decree dismissing the said suit as not maintenable without there being any trail of the suit on merrits and without hearing the same on all issues. As against the said judgement and decree, the petitioner above named approached this Hon'ble Court in Regular Ist Appel No. 01/95 along with an application i.e I.A. No. 1 for granting of temparory injunction. After considering the same, this Hon'ble court been pleased to direct notice to the respondent and passed as order restraining the respondents from invoking the bank guarantee furnished by the petitioner. A copy of the said order is herewith produced as ANNEXURE-A,

3. In the meanwhile, the first-respondents State Government published a notification which is published in the Karnataka Gazette extra-ordinary dated: 25-2-95 published the Karnataka Excise Third Amendement Act, 1993 (Karnataka Act No. 2/95), thereby, section 68 of the existing Karnataka Excise Act (Hereinafter referred to as the 'Act') has been included with Section 68-B, 68-C, and 68-D, by virtue of which, the aggrieved parties are restrained from approaching any civil court as well as restricting the granting of interim order of any nature by any court, besides, he also declares that apart from the existing interim orders getting dissolved or vacated, the pending suits and appeals or other proceedings stand abated. ANNEXURE-'B' For the sake of convenience, the petitioner is also producing herewith the exract of the

entire section 68A, 68B, 68C, and 68D and section 69 of as Annexure-C. A copy of the order made by this Hon'ble Court in the WP No. 18873/91 is produced herewith as ANNEXURE-D.

4. It is submitted that Act No. 2 of the 1995 incorporating Section 68B, 68C, 68D, and Section 3 providing for disposal of the pending proceedings received the account of the Governor on 21-2-1995 and the same has been published in Karnataka Gazette dated: 25-2-1995.

5. Section 68B of the Act takes away the jurisdiction of the Civil Court in respect of any matter which any Excise officer or other authority order by under the Act, is competent to determine. The said section further takes away the jurisdiction of any court to grant injunction in respect of any action taken or to be taken by such Excise officer or authority in puersuance of any power conferred by or under the Act. The said section read as follows:

> "68-B bar of jurisdiction of civil court No civil courts shall have jurisdiction in respect of any matter which any excise officer or other authority empowered by or under this Act as to determine and no injunction shall be granted by any court in respect of any action taken or to be taken by such excise officer or authority in pursuance of any power conferred by or under this Act".

6. Section 68-C of the Act provides notwithstanding anything contained in the civil procedure code, or in any other law for time being in force, no court shall grant any permanent or temporary injunction. The said section reads as follows:

> "68C injunction not to be granted in respect of recovery of Excise dues-(1) notwithstanding any thing contained in the code of civil procedure 1988 (Central Act V of 1908) or in any other law for the time being in force, no court shall grant any permanent or temporary injunction or make any interim order retraining any proceedings which is being or about to be taken for:

i) The recover of any suit or fee or both levied in consideration of rent or lease of any exclusive or other rights under this act or the rules made thereunder or any fee duty or Counter Vailing duty and including licence fees and litre fee or any other fees levied under this act or the rules made thereunder:

ii) The grant of any exclusive or other right under section 17".

Sub section II of the section 68(c) further provides that all interim order issued or made by the Court whether in the nature of temporary injunction or otherwise, restraining any proceedings referred to in clauses (i) and (ii) of subsection (i) which is being or about to be taken shall stand dissolved or vacated. Sub section (2) of section 68C read as follows:

2) "All interim orders issued or made by such court whether in the nature of temporary injunction or otherwise restraining any proceedings referred to in clauses (i) and (ii) of sub-section (i) which is being or about to be taken shall stand dissolved or vacated as the case may be".

7. Section 68B provides that notwithstanding that writ petition has been preferred before this Hon'ble court or a suit or other proceedings has been instituted in any court or any appeal has been filed before any court etc, any sum due to the state Government under the Act has a result of demand or order made or caused by any officer or authority empowered in this behalf by or under this Act shall be payable in accordance with such demand or order. Section 3 of the act further provides all suits appeals and other proceedings in respect of the matters referred to Section 68B and matters connected herewith pending before the court immediately before the date of commencement of this act shall not have effect and shall abate. The said section 68B reads as follows:

"68D Excise Revenues to be paid irrespective of pendency of any writ position suit etc.

Not withstanding that a writ petition has been preferred before the High Court or a suit or other proceedings has been instituted in any court or any appeal has been filed before any court, the Karnataka Appellant Tribunal of Excise commissioner or a revision has been filed before the State Government, any sum due to the state Government under this act as a result of demand or order made or passed by any officer or authority empowered in this behalf by or under this Act shall be payable in accordance with such demand or order.

Section 3 reads as follows:

"3D disposal of pending proceedings all suits, appeal and other proceedings (including execution proceedings) in respect of the matter referred to in Section 68B and matters connected therewith pending before any court immediately before the date of commencement of this not shall not have effect and shall abate:

Provided that in Computing the period specified in sub-section (i) and (ii) of Section 61, the period during which any suit, appeal or other proceedings referred to in this section in pending in any court, shall be excluded".

8. Therefore in the reading of Section 68B, 68C, 68D, it is clear that the jurisdiction of the court which must be understood only as the civil court is taken away to seek relief against the state or its officers in respect of any claim made by the state or its officers against any citizen or a person. It is also clear from the provisions referred to above, the power of the civil court to grant an order of injunction either permanent or temporary restraining the state and its officers from recovering any sum, alleged to be due by excise Contractors is also taken away. Further, all interim orders granted by the civil court also stands dissolved. The suits and the appeals pending before the civil court also get abated. In other words, if there is a dispute with regard to the alleged claim made by the stae for the recovery of any Excise duty, by an excise contractor, the said excise contractor has to defends in the matter. He has no remady to defend the claim that may be made by the state however the

said claim is baseless, arbitrary and untruthful. In respect of all liability made against any person by the state such a person is concerned, he has no law of judicial review. His right to approach the civil court and seek appropriate relief is completely barred.

9. That the petitioner is advised to submit that the entire Act No.2 of 1995 which makes as amendement in the Karnataka Excise Act by incorporating sections 68B, 68C, 68D, and sub section 3 provided for disposal of the pending proceedings is totally illegal and un constitutional and void in law. The petitioner is advised to submit that our constitutional set up contemplates judicial legislature and executive. But establishment and continuance of the judicial is one of the basic features of the constitution. It is not permissible for the state to take away the right of a person to get his rights adjudicated before a civil court just as state cannot abolish the courts or adjudicating machinery provided to resolve the dispute between the private parties or between private parties and the state. The effect of Act 2 of 1995 is so for as the claim made by the state in respect of excise dues are concerned the person aggrieved on account of such demand made has no right of judicial review and so for as he is concerned for all practical purposes civil courts are not inexistence. It is not permissible in law.

10. It is submitted that section of the Code of Civil procedures recognizes the basic feature of the constitution or the common law right which is in belt in our constitutional system to approach the civil court for adjudication of the civil rights. Section 68B more such remedy. Therefore, similar is the position under section 68C of the act. Section 68D even takes away the power of this Hon'ble court which is exercised under article-226 and 227 of the constitution of India or in exercise of its appelate jurisdiction. The petitioner has not approached this Hon'ble court either himself or through any person earlier on the same cause of action. Under these circumstances, the petitioner without any alternative and efficacious remedy is constrained to approach this Hon'ble court involving its extraordinary jurisdiction under Articles 226 of the Constitution of India, on the following amongst other grounds:

GROUNDS

11. It is submitted that the High Court of a State is established under Article 224 of the Constitution of India and Article 215 of the consitution declares it to be a court of record investing the power to punish for its contempt. Under Articles 226 & 227 of the constitution, every High Court is entitled to exercise its power within its territory in the matter of issuance of any person or authority including any Government, directions, orders or writs including the writs in the nature of Habeas, corpus, mandamus, prohibition, cowarrant and certiorari. The powers invested with the High Court of a state under Articles 226 and 227 of the constitution includes the power to grant interim relief. But surprisingly the state legislature by the impugned amendment, has even taken away the said authority of this Hon'ble court which is impermissible the law and it is in utter violation of the constitution of India.

12. It is submitted that under Articles 245 the state legislature is entitled to make law for the whole or any part of its territory and the subject matter of the laws made by the state legislature or the parliament as the case may be, are governed under Articles 246 of the constitution of India. In other words, the state legislature is competant to make the law in respect of items in the list-II, VII- schedule which is a state list and entry-8 of list-II of 7th schedule provides for making the law in the matter of intoxicating liquors, i.e, to say production manufacture, possession, transport purchase and sale of the intoxicating liquors. Whereas under Entry-51 of the 7th Schedule, it is also entitled to make law in the matter of duties of excise on the alcoholic liquors for human consumption manufactured and produced in the state. Surprisingly in the instant case, the state legislature has not enacted the law in respect of any one of the said entries but it has crossed the bar in encroaching upon the jurisdiction of the courts including this Hon'ble Court established by law, which is not within the legislative competance of the state legislature. Besides even if a special statute can be made it can be made only by providing an equal alternative remedy as required under Section 4 of the Civil Procedure Code.

13. The Karnataka Act No. 2 of 1995 which has incorporated provisions of sections 68B, 68C, 68D and Section 3 of the Act, in substance prevents or debars a person from approaching the court for adjudication of his civil rights in the event of any steps being taken to recovery any alleged arrears of kisth amount or other excise dues to the State-Government. In other words, the person who has benefits or has far dispute with regard to the claim made by the state against him for payment of Excise dues has no remedy and the decisions of the authorities or excise officer may final. Our Constitutional set up envisages judicial review as basic feature of the constitiution. From the reading of several provisions of Act 2 of 1995 which amends the Karnataka Excise Act of 1965 is clear wherever there is dispute excises by a persons against the state in respect of excise dues and other dues. Such a person as no legal remedy except to accept the decisions of the authorities or officers concerned. Therefore the said provisions is liable to be struck down as unconstitutional as being opposed to the basic structure of feature of the constitution.

14. That the provisions of section 68B, 68C, 68D and section 8 of the amending act are also liable to be struck down as unconstitutional as being highly unreasonable, arbitrary and discriminative in nature. The state being the biggest ligigant and very powerful authority as against a person, cannot pass a legislation which will be totally one sided and for its benefit and which deprives a person of his right to get a dispute rights by him with the state. Settled with the proper court of law. Section 68B makes the decision of the Excise Officers final in respect of which the provisions is made under the excise act to determine any matter and the civil court jurisdication is taken away in respect of the said matters. Similarly the power of the civil court to grant injunction in respect of any action taken by such an officer in respect of the said matter is also taken away. The said provisions is highly unreasonable and illegal and discriminative in nature. The same seriously effects the right to livelihood guaranteed to a person as a person is compelled to accept the decision of the excise officers which will have the effect on the life of a person, if the decision of the said excise officer is illegal and the same is allowed to stand.

15. Section 68B, 68C, 68D of the Excise Act and Section 3 of the amending Act are also liable to be struck down has being violative of the code of civil procedure, Section 9 of the civil procedure code recognises that constitutions right guaranteed to a person to approach the civil court. Therefore the said provisions being approached to the provisions of the court of civil procedure are also liable to be declared as null and void.

16. That the state which as monopoly and absolutely control in the matter of dealing with excise contractors is preventing a person approaching the civil court whenever a dispute is raised by him when a claim made by an officer of the state against such a person. If that is allowed the right to carry on bussiness guaranteed to a citizen under Article 19(1) (g) of the constitution of India is affected.

17. That the adjudication of the dispute is a common right guaranteed to every person. The civil procedure code confers power on the civil court to grant both permanent injunction and temporary injunction whenever illegal demands are made against a person. However the provisions amending Act No. 2 of 1995 debars the civil court either to grant permanent injunction or temporary injunction in the matter of proposed act of the state Government for recovery of any amount which is on the nature of excess dues by a person to the state the excess dues are hicked up for preferencial treatment as against various other types of arrears due to the state Government. If a person who is in arrears of various other types arrears due to the state Government. If a person who is in arrears of various other types of dues to the Government can approach the court and seek appropriate relief for adjudication of his rights there is absolutely no justification to prevent the persons who are stated to be in arrears due should be prevented in approaching the civil court by prefer relief by way of permanent injunction or temporary injunction. Therefore the provisions of Act No. 2 of 1995 is liable to be struck down as violative of Artticle 14 of the constitution of India.

18. Sub section 2 of section 68C dissolves or vacated the interim orders passed by the court. The court passes the porders the basis of the evidence on record and appreciating the same and after application of mind and due consideration of legal position and respective rights of the parties. Such a judicial decision cannot be at knot by in-correcting sub section 2 of the section 68C of the act and providing which such interim ordes stand dissolved or vacated unless basis of such civil court decisions or interim orders are removed in the legislation itself.

19. Section 68D runs conterfoil to the power conferred on the High Court under Article 226 & 227 of the Constitution of India. On this ground along the said section is liable to be struck down. Further, the said section also takes away the power of the Civil court, Karnataka Appellate Tribunal and the Excise Commissioner to pass appropriate orders granting reliefs to the parties in the appeal or the revision or any proceedings that are initiated before them.

20. Section 3 of amending Act No.2 of 1995 in one stroke provides that all matters referred to under Section 68B and matters connected therewith pending in the civil court immediately after the commencement of, the Act shall not affect and stand abated. The effect of the said provision is to by one stroke dismiss of the suits pending adjudication before the civil court and even inspite of which some other interim orders would have been passed by the civil court. This is not permissible in law. The said provision is also liable to be struck down as unreasonable, arbitrary and the right gurranteed to the petitioner under Article 14 of the constitution of India. As stated earlier, the number of suits filed by the petitioner are pending adjudicating before the civil court. The effect of section-3 is to make the said suits abate.

GROUNDS FOR INTERIM PRAYER

21. As submitted above, the petitioner has filed Regalur First Appeal No. 91/1995 before this Hon'ble Court as against the judgement and decree passed in O.S. No. 1708/1992 dated: 21-1-1995 and on the application for temporary injunction, this Hon'ble court has been pleased

to direct notice to the Respondents and pass an order restraining the respondents from invoking the Bank Guarantee furnished by the petitioner. Vide Annexure-A to this writ petition however, now by virtue of the impugned enactment, the respondents 1 to 3 are trying to invoke the Bank Guarantee held by the petitioner with the fourth respondents bank and if that is allowed to be done, the petitioner would be put to untold hardship and irreparable loss. Under these circumstances, it is just and necessary to grant an interim order is prayed for staying the effect and implemetation of the said enactment.

MAIN PRAYER

WHEREFORE it is prayed that this Hon'ble court may be pleased to call for the relevant records and:

a) Issue a writ of certiorari or any other appropriate writ, order or directions and quash the impugned enactment published in the Karnataka Gazette extraordinary dated: 25-2-1995 in Notification on No. LAW 33 LGN 93 dated: 25-2-1995 known as Karnataka Excise IInd amendment Act 1993 (Karnataka Act No. 2/95) vide Annexure-B.

b) Issue a writ of mandamus declaring the impugned enactment as unconstitutional and beyond the State's legislative competence: and

c) Issue any other approperiate writ, order or directions to this Hon'ble Court deems fit under the facts and circumstances of the case, in the interest of justice & equity.

INTERIM PRAYER

For the reasons stated in paragraph 22 above, it is prayed that this Hon'ble court may be pleased to grant in interim order of stay staying the effect, operation, enforcement and implementation of the impugned enactment calleed" Karnataka Excise Third Amendment Act,

1993 (Karnataka Act No.2/95) which is published in the Karnataka Gazette Extraordinary dated: 25-2-95 in Notification No. Law 33. LEW. 93 dated: 25-2-95 vide Annexure-B and further direct the respondents 1 to 4 not to invoke the Bank Guarantee No. 4/92 dated: 15-7-91 offered by the petitioner while securing the lease of the right of the retail vending of arrack for the excise year 1991-92 in respect of Mangalur, Taluk, pending disposal of the above writ petition in the interest of justice and equity.

Bangalore. Sd/-
Dated: 8-3-1995 Advocate for Petitioner.

Address for Service:
Shri G.K. Bhat
Advocate,
No. 316, III Floor,
Kurubara Sangha Building,
Kanakadasa Circle,
Gandhinagar, Bangalore-560 009.

IN THE COURT OF KARNATAKA AT BANGALORE
(ORIGINAL JURISDICTION)
WRIT PETITION No. 9830 OF 1995

BETWEEN

1. DHARMARAJ
S/o K.N. Ramaswamy
Aged 39 Years,
C.N.P. Compound,
Near Bus Stand, Hiriyur Town,
Chitradurga District. Petitioner.

And

1. State of Karnataka
by its/Secretary,
Vidhana Soudha,
Dr. Ambedkar Veedhi,
Bangalore-560 001.

2. State of Karnataka
by its Secretary and
Commissioner for Finance and Excise
Vidhana Soudha, Dr. Ambedkar Veedhi,
Bangalore-560 001.

3. The Excise Commissioner
Government of Karnataka
Vokkaligara Sangha Building,
Hudson Circle, Bangalore.

4. The Deputy Commissioner of
Excise, Chitradurga District,
Chitradurga.

5. Superintendent of Excise
Chitradurga Rage,
Chitradurga.

6. Corporation Bank,
Subedar Chatram road,
Bangalore-560 009.
By its Branch Manager. Respondents

MEMORANDUM OF WRIT PETITION UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA

Petitioner above named humbly submits as follows:

1. That the petitioner is an Excise Contractor and during the Excise Year 1991-92. he had taken on lease the right of retail vend of arrack in hiriyur Taluk of Chitradurga District on a montly rental of Rs. 13,50,000/- During the Said period petitioner had presented an original suit O.S. No. 6 of 1992 before the Court of Munsiff, at Hiriyur seeking an order of permanent injunction restraining the defendants from collecting the monthly rental Value at the rate of Rs. 13,50,000/- per

month from the plaintiff towards the sale of right to vend arrack and consequently directing the defendants to adjust the excess amount towards future rents at the rate of Rs. 2,50,000/- per month and for refund of balance amount, as there had been breach of the contract and violation of the terms and conditions as the defendants had allowed the tapping of trees in Hiriyur Taluk resulting in clandestine sale and causing enormous loss to the plaintiff.

2. The Court of the Munsiff at Hiriyur considering IA Nos, II and III made in the suit and on hearing on IA' II and III had been pleased to make an equitable interim direction, directing the defendants not to recover rentals of Rs. 13,50,000/- but were at liberty to recover the rental value at the rate of 25% of the agreed rental value for the subsequent periods at the same rate of 25% of the rental value. The said equitable interim directions were issued keeping in view indentical reliefs granted under identical circumstances by this Hon'ble Court in C.R.P. 5500 of 1990 and connected cases, ordered on 12-4-1991.

3. An appeal was filed by the defendants under order 43 Rule 1 of the code of Civil Procedure against the said order of the trial court and pending consideration of the appeal, IA No. II filed by the defendants in the appeal seeking a direction for renewal of Bank Guarantee to subserve the interest of the defendants. The court below proceeded to consider the appeal itself on merits and had allowed the appeal and set aside the orders on IA II and III in OS No. 6 of 1992 and dismissed the IAs II and III filed in OS No. 6 of 1992.

4. Aggrieved, petitioner herein had presented a Civil Revision Petition numbered as CRP 3911/1992 before this Hon'ble Court, wherein this Hon'ble Court was pleased to make an interim order staying the encashment of Bank Guarantee furnished, directing this petitioner to keep the said Bank Guarantee current for six months. Petitioner has since then kept the Bank Guarantee current and valid and the matter is pending consideration before this Hon'ble Court. A xerox copy of the communication by telegram of order of this Hon'ble court made in

CRP 3911/92 is produced herewith, marked as ANNEXURE-A for the perusal of this Hon'ble Court.

5. In the meanwhile, Ist Respondent-State published a Notification in the Karnataka Gazette extraordinary dated: 25-2-1995 publishing Karnataka Excise (Third Amendment) Act, 1995 (Karnataka Act No. 295) whereby after Section 68-A of the existing Act, there have been insertion on Sections 68-B, 68-C and 68-D, by virtue of which the aggrieved parties are restrained from approaching any Civil Court as well as restricting the granting of interim order of any nature by any Court. Besides it also declares that apart from the existing interim orders getting dissolved or vacated, pending suits and appeals or other proceedings stand abated, A copy of the said amendment published by notification, which is impugned in this writ petition is produced herewith, marked ANNEXURE-B.

6. Petitioner humbly submits that Act No. 2 of 1995 incorporating Sections 68B, 68C, 68D, and Section 3, providing for disposal of pending proceedings has received the assent of the Governor on 21-2-1995 and the same has been published in Karnataka Gazette on 25-2-1995.

7. Petitioner humbly submits that as could be noticed therefrom, section 68B, of the Act takes away the jurisdiction of the Civil Court in respect of any matter which any Exicse Officer or other authority under the Act is competent to determine. The said section further takes away the jurisdiction of any court to grant injunction in respect of any action taken or to be taken by such Excise Officer or authority in pursuance of any power conferred by or under the Act. Section 68C of the Act provides that not withstanding anything contained in the Civil Procedure Code or in any other law for the time being in force, no Court shall grant any permanent or temporary injunction in sub section 2 of Section 68C further provides that all interim orders issued or made by the court, whether in the nature of temporary injunction or otherwise, restraining any proceedings referred to in clause (1) and II of subsection (1) which

is being or about to be taken, shall stand dissolved or vacated. Section 68D provides that not withstanding that a writ petition has been preferred before this Hon'ble Court or a suit or other proceedings has been instituted in any court or any appeal has been filed before any court, etc, any sum due to the State Government under the Act as a result of demand or order made or passed by any officer or authority empowered in this behalf by or under this Act, shall be payable in accordance with such demand or order. Section 3 of the Act further provides all suits, appeals and other proceedings in respect of the matters referred to in section 68B and matters connected therewith pending before the Court immediately before the date of commencement of this Act, shall not have effect and shall abate.

8. Therefore, from the reading of Sections 68B, 68C, and 68D it is clear that the jurisdiction of the court which must be understood only as the Civil Court is taken away to seek relief against the State or its Officers in respect of any claim made by the state or its officers against any citizen or person. It is also clear from the provisions referred to above, the power of civil court to grant an order of injunction, either permanent or temporary, restraining the state and its officers from recovering any sum alleged to be due by Excise contractors is also taken away. Further, all interim orders granted by the civil court also stands dissolved. Suits and appeals pending before the civil court also get abated. In other words, if there is a dispute with regard to the alleged claim made by the state for the recovery of any Excise duty by an Excise contractor, the said Excise contractor has no defend in the matter. He has no remedy to defend the claim that may be made by the state, however the said claim is baseless, orbitrary and untruthful. In respect of all liability made against any person by the State so far as such a person is concerned, he has no remedy of judicial review. His right to approach the civil court and seek appropriate relief is completely barred.

9. That the petitioner submits that the entire Act No. 2 of 1995 which makes an amendment to the Karnataka Excise Act by

incorporating Sections 68-B, 68-C, 68-D and sub-sections 3 providing for disposal of the pending proceedings, is totally illegal and unconstitutional and void in law. The Petitioner humbly submits that our constitutional set up contemplates judiciary, legislature and executive wings of a State, and establishment and continuance of the judiciary is one of the basic features of the constitution. It is not permissible for the state to take away the right of a person to get his rights adjudicated before a civil court, just as a State cannot abolish courts or adjudicating machinery provided to resolve the dispute between the private parties or between private parties and the state. Petitioner humbly submits that subsequent to publication of Act 2 of 1995, 3rd Respondent herein has flashed a Telex message on 2-3-1995 directing all the Officers of the Department to forthwith demand and encash all available bank guarantee and adjust all security deposits. A Copy of the said message by the 3rd Respondent is produced herewith, marked as ANNEXURE-C to the writ petition.

10. Petitioner humbly submits that the various sections of the Code of Civil Procedure recognised the basic feature of the constitution or the common law which is inbuilt in our constitutional system, to approach the civil court for adjudication of his civil rights. Section 68-B bars such remedy, and similar is the position under section 68C of the Act. Section 68D even claims to take away the power of this Hon'ble court which is exercised under Act. 226 and 227 of the constitution of India or in exercise of its appellate jurisdiction. Petitioner humbly submits that armed with Telex message of the third Respondent, 4th Respondent has made a demand invoking the bank Guarantee by his communication of 10-3-1995, A copy of the same is produced herewith, marked as ANNEXURE-D to this writ petition Petitioner, by his request dated: 11-3-1995 has already pointed out that this Hon'ble court has been pleased to stay the operation of Act 2 of 1995, a copy of which is produced and marked as ANNEXURE-E, to this writ petition, But petitioner has been informed by 6th Respondent that Respondents 3 and 4 herein has been pressing to make payments.

Petitioner has not approached this Hon'ble Court either by himself through any person earlier on the same cause of Action. Under these circumstances, without any alternative and efficacious remedy for redressal of his grievances and the highhanded action of the Respondents to realise the bank guarantee, despite interim order, is constrained to approach this Hon'ble Court invoking its extraordinary jurisdiction under article 226 of the constitution of India, on the following amongst other grounds.

GROUNDS

11) It is submitted that the High Court of a State is established under Art. 214 of the Constitution of India and Article 215 of the constitution declares it to be a court of record invested with the power to punish for its contempt. Under Art. 226 and 227 of the constitution, every High Court is entitled to exercise its power within its territory in the matter of issuance of any person or authority including any Government, directions, orders or writs including the writs in the nature of Habeas Corpus, Mandamus, prohibition, co-warrant and certiorari. The powers invested with the High Court under Articles 226 and 227 of the constitution includes the power to grant interim relief, But surprisingly the State legislature, by the impugned amendement has even taken away the said authority of this Hon'ble Court, which is impermissible in law and it is in utter violation of the constitution of India.

12) That under Articles 245, State Legislature is entitled to make law for the whole or any part of its territory and the subject matter of the laws made by the State legislature or the Parliament, as the case may be, are governed by Article 246 of the constitution. In other words, State legislature is competent to make the law in respect of items in list II, 7th Schedule which is a State list and entry 8 of list II of 7th Schedule provides for making the law in the matter of intoxicating liquors transport, purchase and sale of intoxicating liquors whereas under entry 51 of the 7th schedule. It is also entitled to make the law in the matter

of duties of Excise on alcoholic liquors for human consumption manufactured and produced in the State. In the instant case, surprisingly the state legislature has not enacted the law in respect of any one of the said entries, but it has crossed the bar encroaching upon the jurisdiction of the courts including this Hon'ble Court established by law, which is not within the legislative competance of the State legislature, Besides even if a special statute can be made, it can be made only by pending an equal alternative and efficacious remedy, as required under section 4 of the Code of Civil Prodedure.

13) That Karnataka Act No. 2 of 1995 which has incorporated provisions of Section 68B, 68C, 68D, and section 3 of the Act, in substance prevents or debars a person from approaching the Court for adjudication of his civil rights, in the even of any steps being taken to recover any alleged arrears of kisth amount or other Excise dues to the State. In other words, a person who has bonafide or genuine dispute with regard to the claim made by the State against him for payment of Excise dues, has no remedy and the decisions of the authorities or Excise officer is final. Our constitutional set up envisages judicial review as the basic feature of the constitution. From a reading of several provisions of Act 2 of 1995, which amends the Karnataka Excise Act 1965, it is clear that whereever there is a dispute or one arises by a person against the State in respect of excise dues and other dues, such a person has no legal remedy except to accept the decisions of the authorities or officers concerned. Therefore, the said provisions are liable to be struck down as unconstitutional as being opposed to the basic structure or feature of the constitution.

14) That the provisions of Section 68B, 68C, 68D and section 3 of the amending Act are also liable to be struck down as unconstitutional, as being simply unreasonable arbitrary and discriminative in nature. The State being the biggest litigant and very powerful authority as against a person, cannot pass a legislation which will be totally one sided and for its benefit and which deprives a person of his right to get a dispute raised by him with the State settled by a proper court of law.

The said provision is highly unreasonable, illegal and discriminative on nature, and it seriously affects the right to livelihood guaranteed to a person, as a person is compelled to accept the decision of the Excise officer which will have the effect on the life of a person, if the decision of the said officer is illegal and the same is allowed to stand.

15) That section 68B, 68C, 68D of the Excise Act and section 3 of the Amending Act are also liable to be struck down as being violative of the Code of Civil Procedure. Section 9 the Code of Civil Procedure recognises the constitutional right guaranteed to a person to approach the civil court, therefore the said provisions being opposed to the provisions of the C.P.C. are also liable to be declared as null and void.

16) That the State, which has monopoly and absolute control in the matter of dealing with the Excise constractors, is preventing a person from approaching the civil court whenever a dispute is raised by him when a claim is made by an officer of the State against such a person. If that is allowed, the right to carry on business guaranteed to a citizen under article 19(1)(g) of the constitution of India is affected.

17) That the adjudication or the dispute is a common right guaranteed to every person. The Civil Procedure Code confers power on the civil court to grant both permanent injunction and temporary injunction, whenever illegal demands are made against a person. However, the provisions of amending Act 2/1995 debars the civil court hither to grant permanent or temporary injunction in the matter of the proposed action by the State Government for recovery of any amount, which is in the nature of excise duty from a person to the State, and excise dues are picked up for preferential treatment as against various other types of arrears due to the state. If a person who is in arrears of various other types of dues other than Excise to the State Government, can approach the court and seek appropriate relief for adjudication of his right, there is absolutely no justification to prevent the persons who are stated to be in arrears of Excise dues, in approaching the civil court for proper relief by way of permanent or temporary injunction. Therefore, the provisions of Act No. 2 of 1995 is liable to be struck down as violative of Article 14 of the constitutions.

18) That sub-section 2 of Section 68C dissolves or vacates the interim orders passed by the court. The court passes the order on the basis of the evidence on record and appreciating the same and after application of mind and due consideration of the legal position and respective rights of the parties. Such a judicial decision cannot be set at nought by incorporating sub-section 2 of section 68-C of the Act and providing with such interim orders stand dissolved or vacated unless basis of such civil dicisions or interim orders are removed in the legislation itself.

19) Section 68-D runs counter to the power conferred on the High Court under Article 226 and 227 of the constitution of India. On this ground alone, the said section is liable to be struck down, further, the void section also takes away the power of the civil court, the Karnataka Appellate Tribunal and the Excise Commissioner to pass appropriate orders granting reliefs to the parties to in appeals or revisions or in any proceedings that are initiated before them.

20) Section 3 of the amending Act No. 2/1995 in one struck provides that all matters referred to under section 68-B, and matters connected therewith pending in the civil court immediately after the commencement of the Act, shall not affect and shall stand abated. The effect of the said provision is to, by one strock dismiss suits pending adjudication before the civil court and even in spite of which some other interim orders have been passed by the civil court. This is not permissible to law. The said provisions is also liable to be struck down as unreasonable, arbitrary and the right guaranteed to the petitioner under Article 14 of the consitution of India. As stated earlier number of suits filed by petitioner and others similarly situate, are pending adjudication before the civil court. The effect of section 3 is to make the said suits abate.

GROUNDS IN SUPPORT OF INTERIM ORDER

21) Petitioner humbly submits that the impugned provisions of statute are unsustainable. Pursuant to the telex message, as stated the 4th Respondent has already invoked the bank guarantee and even though this Hon'ble Court in W.P. No. 6734/95 has stayed operation of the act in general, the authorities have been pressurising to make payments. Petitioner humbly submits that now by virtue of the impugned enactment as stated above, the Respondents 3 and 4 are trying to invoke the Bank Guarantee offered by the 6th Respondent on behalf of the petitioner, and if that is allowed to be done, petitioner would be put to untold hardship and irreperable loss. Under these circumstances it is just and necessary to grant an interim order as prayed for, staying the effect and implementation of the siad enactment, during the pendency of this writ petition.

PRAYER

WHEREFORE it is prayed that this Hon'ble court may be pleased to call for the relevant records and further be pleased to:

a) Issue of writ of certiorari or any other appropriate writ, order or direction and quash the impugned enactment published in the Karnataka Gazette extraordinary dated: 25-2-1995 in Notification on No. LAW 33 LGW 93 dated: 25-2-1995 known as "Karnataka Excise(Third Amendment) Act, 1993 (Karnataka Act No. 2 of 1995) vide Annexure-B.

b) Issue a writ of mandamus declaring the impugned enactment as unconstitutional and beyond the competence of the State legislature and unenforceable: and

c) Issue any other appropriate writ, order or direction as this Hon'ble court deems fit under the facts and circumstances of the case, in the interest of justice and equity.

INTERIM PRAYER

Petitioner humbly prays that for the reasons stated in paragraph 22 above, this Hon'ble Court may be pleased to grant an interim order of stay, staying the effect, operation, enforcement and implementation of the impugned enactment called "The Karnataka Excise (Third Amendment) Act, 1993 (Karnataka Act No. 2 of 95) published in the Karnataka Gazette Extraordinary dated: 25-2-1995 in Notification No. LAW 33 LGN 93 dated: 25-2-1995 vide Annexure 'B' and further direct the Respondents 1 to 5 not to encash the Bank Guarantee by invoking the Bank Guarantee No. 9/91 and 10/91 dated: 15-7-1991 offered by the petitioner for a sum of Rs. 40,50,000/- and 13,50,000/- respectively and issued by the 6th Respondent Bank on behalf of petitioner, while securing the lease of the right of retial vend of arrack for the Excise Year 1991-92 in respect of Hiriyur Taluk (Chitradurga District) during the pendency of the above writ petition, in the interest of justice and equity.

Bangalore. Sd/-
Dated: 20-3-1995 Advocate for Petitioners.

Address for Service:
Madhusudan R. Naik,
Advocate,
No. 47, 6th Cross,
Gandhinagar, Bangalore-560 009.

ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರದಲ್ಲಿನ ಅವ್ಯವಹಾರಗಳು:

54 (132) ಶ್ರೀ ಜಗದೀಶ್ ಶೆಟ್ಟರ್ (ಹುಬ್ಬಳ್ಳಿ ಗ್ರಾಮೀಣ): ಮಾನ್ಯ ಮುಖ್ಯ ಮಂತ್ರಿಗಳು ಈ ಕೆಳಕಂಡ ಪ್ರಶ್ನೆಗಳಿಗೆ ದಯವಿಟ್ಟು ಉತ್ತರಿಸುವರೇ?

1) ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರದಲ್ಲಿ ಕಳೆದ ಮೂರು ವರ್ಷಗಳಲ್ಲಿ ನಡೆದಿರುವ ಅವ್ಯವಹಾರಗಳ ಬಗ್ಗೆ ಎಷ್ಟು ಪ್ರಕರಣಗಳನ್ನು ತನಿಖೆಗಾಗಿ ಸಿ.ಓ.ಡಿ.ಗೆ ವಹಿಸಲಾಗಿದೆ; ವಿವರಗಳನ್ನು ನೀಡುವುದು ಈ ಪ್ರಕರಣಗಳಲ್ಲಿ ಭಾಗಿಯಾಗಿರುವವರ ವಿವರಗಳನ್ನು ನೀಡುವುದು;